

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

KEVIN LEE HUGHBANKS,

4:21-CV-04167-KES

Plaintiff,

vs.

MEMORANDUM IN SUPPORT OF  
MOTION TO STAY DISCOVERY

BRENT FLUKE, in his individual  
and official capacity; REBECCA  
SCHIEFFER, in her individual  
and official capacity;  
ALEJANDRO REYES, in his  
individual and official capacity;  
LAINE SCHRYVERS, in his  
individual and official capacity;  
TAMMY DOYLE, in her individual  
and official capacity; SOUTH  
DAKOTA DEPARTMENT OF  
HEALTH, in its individual and  
official capacity; CORRECTIONAL  
HEALTH SERVICES, in its  
individual and official capacity;  
CHS JANE DOES 1-2, in their  
individual and official capacities;  
DR. MARY CARPENTER, in her  
individual and official capacity;  
STEPHANIE HAMILTON, in her  
individual and official capacity;  
SOUTH DAKOTA DEPARTMENT  
OF CORRECTIONS, in its  
individual and official capacity;  
MIKE LEIDHOLT, in his  
individual and official capacity;  
TIM REISCH, in his individual  
and official capacity; SAM  
BADURE, in his individual and  
official capacity; CODY HANSON,  
in his individual and official  
capacity; MELISSA MATURAN, in  
her individual and official  
capacity; TAMMY TOP, in her  
individual and official capacity;  
JESSICA SCHREURS, in her

individual and official capacity; )  
 “X” SALOUM, in his or her )  
 individual and official capacity; )  
 DARIN YOUNG, in his individual )  
 and JENNIFER DREISKE, in her )  
 individual and official capacity; )  
 SOUTH DAKOTA BOARD OF )  
 PARDONS AND PAROLES, in its )  
 individual and official capacity; )  
 CHARISSA WAREMBOURG, in )  
 her individual and official )  
 capacity; CHUCK GILCHRIST )  
 a/k/a Charles Gilchrist, in his )  
 individual and official capacity; )  
 BRENNNA CARLSON, in her )  
 individual and official capacity; )  
 MARK STOEGBNER, in his )  
 individual and official capacity; )  
 JAMES HENRY, in his individual )  
 and official capacity; GLOBAL )  
 TEL LINK CORPORATION, in its )  
 individual and official capacity; )  
 SUMIT FOOD SERVICE, in its )  
 individual and official capacity; )  
 UNKNOWN CORRECTIONAL )  
 HEALTH SERVICES )  
 EMPLOYEES, in their individual )  
 and official capacities; JOHN )  
 DOE, in his individual and )  
 official capacity; VOIGT, in her )  
 official capacity; DOUG CLARK, )  
 in his official capacity; DAN )  
 SULLIVAN, in his official )  
 capacity, )  
 )  
 Defendants. )  
 )

On April 19, 2022, and May 9, 2022, discovery requests were received at counsel’s office. Hughbanks is seeking interrogatories from Defendants Brenna Carlson, Secretary Wasko, Tiffany Voigt, Director of South Dakota Correctional Health Services, and Kim Halverson in this case. Hughbanks requested

production of documents from Secretary Adam, Secretary Wasko, and the Director of Correctional Health Services.

In its Answer, Defendants allege they are protected by the doctrine of qualified immunity. Doc. 50, p. 11. Therefore, Defendants seek and order from the Court staying discovery until the issue of qualified immunity is resolved, as will be argued in Defendant's Motion for Summary Judgment. Defendants also submit that discovery requests are burdensome and oppressive. Defendants further assert that discovery requests are premature at this time because there are several Defendants that have not been served.

The United States Supreme Court has held that "qualified immunity is 'an immunity from suit rather than a mere defense to liability . . . [and] it is effective lost if a case is erroneously permitted to go to trial.'" *Pearson v. Callahan*, 555 U.S. 223, 231, 129 S.Ct. 808, 815, 172 L.Ed.2d 565 (2009) (quoting *Mitchell v. Forsyth*, 472 U.S. 511, 526, 105 S.Ct. 2806, 86 L.Ed.2d 411 (1985)). The Supreme Court went on the state "[i]ndeed, we have made clear that the 'driving force' behind creation of the qualified immunity doctrine was a desire to ensure that "insubstantial claims" against government officials [will] be resolved prior to discovery.'" *Pearson*, 555 U.S. at 231, 129 S.Ct. at 815 (quoting *Anderson v. Creighton*, 483 U.S. 635, 640, n. 2, 107 S.Ct. 3034, 97 L.Ed.2d 523 (1987)). "[T]he Supreme Court and the Eighth Circuit have 'repeatedly . . . stressed the importance of resolving immunity questions at the earliest possible stage in litigation.'" *Gard v. Kaemingk*, 2014 WL 4092776, at 4, (D.S.D. Aug. 18, 2014)(quoting *O'Neil v. City of Iowa City*, 496 F.3d 915, 917

(8th Cir. 2007)). “[T]he district court ha[s] the inherent power to grant [a] stay in order to control its docket, conserve judicial resources, and provide for a just determination of the cases pending before it.” *Id.* (quoting *Contracting Nw., Inc. v. City of Fredericksburg, Iowa*, 713 F.2d 382, 387 (8th Cir. 1983)).

Thus, until the question of the applicability of the doctrine of qualified immunity is resolved and all Defendants have been served, Defendants oppose Plaintiff’s Request for Discovery, and request that discovery be stayed.

Dated this 17th day of August, 2022.

Respectfully submitted,

/s/ Caroline A. Srstka  
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## CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2022, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Southern Division by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I further certify that some of the participants in the case are not CM/ECF users. I have mailed the foregoing documents by First-Class mail, postage prepaid, or have dispatched it to a third-party commercial carrier for delivery within 3 calendar days, to the following non-CM/ECF participants:

Kevin Lee Hughbanks, 22448  
Mike Durfee State Prison  
1412 Wood Street  
Springfield, SD 57062

/s/ Caroline A. Srstka  
Caroline A. Srstka  
Assistant Attorney General